

THE CABLE TELEVISION LICENSING PROCESS

A PRACTICAL GUIDE TO INITIAL LICENSING

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INTRODUCTION

This Practical Guide is presented by the Cable Television Division (“Cable Division”) of the Massachusetts Department of Telecommunications and Energy in our supervisory role with respect to cable television licensing. Under both federal and Massachusetts law, no cable operator may construct and operate a cable television system in a community without first obtaining a license. In Massachusetts, the city manager, mayor or board of selectmen is responsible for issuing a license and, hence, is designated as the Issuing Authority. Federal law requires that each license granted be non-exclusive. Issuing Authorities therefore may engage in initial licensing either to bring cable television services to a community for the first time or to provide the community with a choice in cable television providers.

The Cable Division has promulgated regulations that establish a framework within which the Issuing Authority determines whether to go forward with the licensing process, recommends services and terms to be included in the license, and decides what applicant or applicants will be granted the license or licenses, if any are to be granted. The regulations are intended to ensure that the cable license is granted in an open, fair proceeding that treats all applicants equally. These underlying principles of fairness and due process should be kept in mind at all times by the municipal officials responsible for conducting the licensing process.

In this Practical Guide, the Cable Division first presents an overview of the role of government in cable television licensing. We describe each level of regulatory oversight with a focus on the resources available to Issuing Authorities. Next, the Cable Division outlines the initial licensing process, highlighting the statutory and regulatory requirements. Finally, we provide a list of references and information where additional resources may be accessed.

The information in this Practical Guide is necessarily general in nature. The Practical Guide is not a substitute for particularized advice from an attorney. In addition, federal and Massachusetts laws and regulations are subject to change. Therefore, persons should refer to the current Massachusetts General Laws, the Code of Massachusetts Regulations, the Federal Communications Act of 1934, as amended, and the appropriate federal rules and regulations, or they may consult the Cable Division with case-specific questions.

THE ROLE OF GOVERNMENT

Licenses to construct and operate cable television systems are granted by the “Issuing Authority” of a city or town. Pursuant to section 1(d) of General Laws chapter 166A, the Issuing Authority is the mayor of a city, the board of selectmen of a town, or the city manager of a city with a plan D or E charter. The Issuing Authority decides initially whether to go forward with the licensing process, recommends services and terms to be included in the license, and decides whether to grant a license.

The Issuing Authority takes these actions within the framework provided by federal and state law. Congress has enacted a series of laws that establish many of the substantive and procedural requirements governing cable television licensing. For example, federal law requires that each operator obtain a license to service a particular area, and that the license be non-exclusive. The Federal Communications Commission (“FCC”) is charged with ensuring that cable operators and licensing authorities comply with federal law.

In addition to federal oversight and regulation, many states have enacted laws regarding cable television regulation. In Massachusetts, the Cable Television Division oversees cable television licensing, and ensures that municipalities and cable operators comply with both federal and state law, particularly where state law is more restrictive than federal law. For example, state law limits the term of a license to 15 years for an initial license and ten years for a renewal license. The Cable Division also acts as the appellate body, that is, a cable operator may appeal to the Cable Division for review of an Issuing Authority decision.

Since it is the Cable Division’s enabling legislation and regulations promulgated thereunder that establish the regulatory framework for Issuing Authorities to follow, the Cable Division has created the position of Municipal Liaison to bridge these two bodies. The Municipal Liaison’s chief function is to assist municipal officials as they work through the licensing process. The Municipal Liaison will meet with local governments to explain the statutory and regulatory requirements involved in the licensing process. The Cable Division maintains, as public records available for inspection, a copy of each license granted in Massachusetts. In addition, we maintain, on our website, an electronic library of many of these licenses. By providing this assistance, the Cable Division seeks to ensure that the Issuing Authority acts in compliance with federal and state law to obtain a license that best serves the needs of the community.

THE INITIAL LICENSING PROCESS

Under federal and Massachusetts law, cable operators must obtain a license from the Issuing Authority in each city or town in which it intends to offer cable television service. Moreover, every license must be non-exclusive, that is, an Issuing Authority may not grant an exclusive right to serve the community to one operator. Given this, Issuing Authorities may engage in initial licensing not only to bring cable television service to the community for the first time, but also to provide the community with a choice of cable service by licensing another cable operator to compete with the incumbent operator. In either case, the process must be fair and open to all participants.

INITIATING THE LICENSING PROCESS

The licensing process may be formally initiated in any one of three ways: (1) an Issuing Authority may decide to initiate the process either on its own initiative or because a cable operator has informally expressed interest in serving the community; (2) a cable operator may file an application for a license without any initiation by the community, or (3) registered voters in a community may file a petition to initiate the process. If a petition is filed, at least ten but no more than 500 registered voters must sign the petition. The number of voters signing the petition must equal one-half of one percent of the residents of the community based on the most recent federal census figures. In most cases, the licensing process is initiated by the Issuing Authority.

BY ISSUING AUTHORITY - NO NOTICE REQUIRED

The Issuing Authority may initiate the process on its own by making the decision and informing the Cable Division. A Board of Selectmen would do so by a majority vote at a regularly scheduled meeting, or at a special meeting called to decide whether to proceed with the process. A mayor or city manager who decides to initiate the process should issue a statement indicating that the process has started. Under state and federal law, the Issuing Authority is not required to provide notice prior to the initiation of the process.

BY PETITION OR APPLICATION - HEARING REQUIRED

If the process is initiated by petition or cable operator application, the Issuing Authority is required to hold a public hearing and decide whether to undertake the licensing process. Notice of the hearing must be published in a local newspaper of general circulation in the community at least 14 days before the hearing, and must

appear at least twice, in two successive weeks. If there is no local newspaper, then the notice must be posted conspicuously in the city or town hall for at least 14 days.

For any public hearing held by the Issuing Authority for the purposes of initial licensing, the Issuing Authority must provide for a stenographic, video or other tape record of the hearing. The Issuing Authority may choose the recording methodology. The applicant will bear the cost of the recording.

At the hearing, the Issuing Authority should obtain input from the public, from the applicants and from other interested persons regarding the advisability of proceeding with the cable licensing process. The Issuing Authority must decide whether to proceed within 60 days of the filing of the application or petition; therefore, the hearing must take place no more than 60 days after the filing of the initiating document.

DECISION - TO PROCEED OR NOT TO PROCEED

If, after the hearing, the Issuing Authority decides not to proceed with the licensing process, it must issue a written statement of its reasons for not proceeding. The Issuing Authority must send a copy of this statement to the Cable Division and to any applicant within seven days of the decision not to proceed.

If, after the hearing or on its own initiative, the Issuing Authority decides to go forward with the process, the Issuing Authority must take two actions:

- a) The Issuing Authority must notify the Cable Division of its decision to initiate the process. The notification to the Cable Division should be in writing, and should indicate the date of the decision and the method of initiation, that is, by petition, application or the Issuing Authority's own initiative. The date of the decision is significant since the Issuing Authority must decide whether to approve or deny any application within 12 months of the decision to proceed with licensing.
- b) The Issuing Authority must solicit applications by placing advertisements in a local newspaper and a national trade journal. The advertisement must set a deadline for filing of applications that is at least 60 days after the date the advertisement appears.

An Issuing Authority may request that the Cable Division waive these solicitation and notice requirements. Issuing Authorities have argued that national publication does not result in additional applications and that the 60-day notice period unnecessarily delays the benefits of competition in the community. The Cable Division has routinely waived

the national solicitation requirement and reduced the notice period to 30 days.

THE ISSUING AUTHORITY REPORT

Once the licensing process is formally initiated, the Issuing Authority must begin to prepare the Issuing Authority Report on System Specifications ("Issuing Authority Report"), a document that contains the recommended specifications for the cable system.

CABLE ADVISORY COMMITTEE ("CAC")

Many Issuing Authorities find it helpful to appoint a committee to assist in gathering information about cable television and in preparing the Issuing Authority Report. The size and make-up of the cable advisory committee ("CAC") is determined by the Issuing Authority, and its members may include both residents and non-residents of the community. CACs are considered "governmental bodies" within the purview of the Massachusetts Conflict of Interest law, at General Laws chapter 268, and are subject to these guidelines.

The Issuing Authority, in appointing a CAC, should define the committee's role and duties. Only the Issuing Authority, by statute, may make the final licensing decision. However, this does not preclude the Issuing Authority from relying on the CAC's recommendations. The CAC is usually asked to do such things as: inform and educate the public about cable; solicit ideas regarding possible services to be derived from the cable system; assist in preparing the Issuing Authority Report; and assist in the analysis of applicants.

RECEIPT OF APPLICATIONS

By the deadline established for filing applications, interested cable operators will prepare an application and submit it, with the \$100.00 statutory filing fee, to the Issuing Authority. Cable operators must file their applications on the Cable Division's Form 100. The Issuing Authority may require that the applicants file additional, relevant information. The Cable Division's regulations require that a cable operator file at least two copies of the application with the Issuing Authority and one with the Cable Division.

PURPOSE OF THE ISSUING AUTHORITY REPORT

The Issuing Authority Report is the Issuing Authority's primary opportunity to tell applicants what it wants from the cable system.

The Issuing Authority prepares the Issuing Authority Report after it has received the initial applications. This gives the CAC and Issuing Authority a chance to examine the applications and focus on what can be reasonably expected from the cable system. By studying the initial applications, the CAC and Issuing Authority are likely to find some proposed services that they will want to request in the Issuing Authority Report. After the report is prepared and distributed, the applicants may amend their initial applications to comply with the report to whatever extent they wish.

The Issuing Authority Report must be issued within 90 days after the application filing deadline. Within seven days of issuing the report, the Issuing Authority must forward a copy to all cable operators that submitted initial applications as well as to the Cable Division. The report should establish a deadline for amendments to the initial applications. No application may be amended after the deadline for receipt of amendments.

SPECIFICATIONS

The Cable Division does not prescribe every term that must be included in the Issuing Authority Report. The needs of each community are better determined at the local level. There are, however, some specifications that are prescribed either by statute or regulation to be included in a final license and therefore should be included in the Issuing Authority Report. A complete list is found in General Laws chapter 166A, sections 3 and 5. The following is a brief summary:

Exclusivity -	An Issuing Authority may not grant an exclusive license.
Duration of License -	Under state law, the term of an initial license may not exceed 15 years. A license may be renewed for additional periods not to exceed ten years. The Issuing Authority cannot commit itself to an automatic renewal or extension of the license after the initial fifteen years.
Areas to be Served -	The Issuing Authority should give careful consideration to the economic problems involved in serving sparsely populated areas. The "areas to be served" should be considered in conjunction with the line extension policy and construction schedule. The cable operator must annually wire and provide service in not less than ten percent of the area or areas specified until it has completed its construction and service is available in the areas to be served.

Property Damage -	In installing, operating, and maintaining equipment, cable and wires, the cable operator must avoid all unnecessary damage and injury to trees, structures, and improvements in and along the routes authorized by the Issuing Authority.
Indemnification -	The cable operator must indemnify and hold the city or town harmless at all times during the term of the license from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation, or maintenance of any structure, equipment, wire or cable authorized to be installed pursuant to the license.
Insurance -	The cable operator must carry insurance in companies satisfactory to the Issuing Authority indemnifying the city or town and itself from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, or maintenance of any structure, equipment, wires or cables authorized or used pursuant to the license. The amount of such insurance against liability for damage to property shall not be less than two hundred thousand dollars as to any one accident. The amount of such insurance for liability for injury or death to persons shall not be less than one hundred thousand dollars on account of injury to or death of any one person and three hundred thousand dollars on account of injury to or death of any number of persons in any one accident.
Public Buildings -	The cable operator must provide a cable drop and an outlet along its cable routes at no cost to public schools, police and fire stations, public libraries, and other public buildings designated in writing by the Issuing Authority.
Bonding -	Before commencing construction, the cable operator must submit to the Issuing Authority a bond, with corporate surety satisfactory to such authority. The conditions and terms of said bond

shall be (1) the satisfactory completion of installation and operation of the system; (2) the indemnity of the city or town; (3) the satisfactory removal of its system upon abandonment; and (4) the satisfactory restoration of pavements, sidewalks, and other improvements.

Service Interruption - In the event its service to any subscriber is interrupted for twenty-four or more consecutive hours, the cable operator must provide the subscriber a pro rata credit or rebate.

Construction Schedule - The license must specify the date construction begins and is completed, as well as the date service will be available. The cable operator must complete construction in the areas to served within six years after the license is granted.

Other topics are also often considered in an Issuing Authority Report, such as system capability, including channel capacity, and plan for access channels and facilities.

The Issuing Authority Report should also include the criteria that will be used to assess the applicant. The Issuing Authority Report may indicate which requested specifications will be given the greatest emphasis in the evaluation process.

The Issuing Authority Report is the only opportunity for the Issuing Authority to tell potential applicants what it wants in a cable system. When the report is issued, each applicant has an equal opportunity to file amendments conforming to the report. Once the report is issued, the Issuing Authority cannot change its requests. This is to ensure a fair and impartial licensing process.

AMENDMENTS TO APPLICATIONS

Within seven days of issuing the Issuing Authority Report, the Issuing Authority must send a copy to each applicant and to the Cable Division. In the report, the Issuing Authority should set a deadline for receiving amendments to the initial applications. This deadline should provide a reasonable time to prepare amendments, usually 30 to 45 days, or longer.

Applicants will most often choose to amend their initial applications, although an applicant is not required to do so. Just as the Issuing Authority Report is the community's last opportunity to request services and specifications, the amended application is the applicant's final opportunity to make its best offer to the community.

The Cable Division's regulations prohibit any material change in an application after the deadline for filing amendments.

THE HEARING

After the amendments are received, the Issuing Authority must schedule a hearing to assess the qualifications of each applicant. The Issuing Authority must cause notice to be published twice, in two successive weeks, in a newspaper of general circulation in the community. If there is no local newspaper, the Issuing Authority must post the notice in city or town hall for at least 14 days before the hearing.

The hearing is an opportunity for each applicant to make a presentation to the Issuing Authority. This is also the Issuing Authority's opportunity to ask questions and to clarify any ambiguities regarding each application. Therefore, the Issuing Authority and CAC should examine the amended applications carefully before the hearing and prepare a list of questions.

The Issuing Authority determines the structure of the hearing to assess applicant qualifications. The Cable Division's only specific procedural requirements are that notice be provided and that a stenographic or tape record be kept of the proceeding. The conduct of the hearing should be guided by the principles of fairness and common sense. If all applicants are treated fairly and given an adequate opportunity to be heard, the Issuing Authority will be better able to assess the applicant's qualifications.

THE PROVISIONAL LICENSE

THE DECISION WHETHER TO GRANT A PROVISIONAL LICENSE

Within 60 days following the close of the public hearing, the Issuing Authority must decide whether provisional licenses will be awarded, and if so, to whom. The decision to approve or deny each applicant must be based on the information provided in the applications and amendments, the Issuing Authority Report, and any other information included in the hearing record.

The license granted to the qualified applicants at this stage is a "provisional license." A provisional license is intended to let the applicant know that it has been selected. The provisional license does not entitle the holder to commence actual physical construction of the cable system; however, the provisional licensee may make all the necessary preparations for construction, such as obtaining financing. The provisional license may not be transferred to another cable operator.

The Issuing Authority must issue a written decision containing a detailed explanation of the reasons for the approval or denial of each application. The statement of reasons must be sent to each applicant and a copy filed with the Cable Division. The Issuing Authority must also file a copy of the provisional license with the Cable Division. The Issuing Authority should prepare the statement of reasons with care. The statement should recapitulate all the factors leading to the decision. By statute, applicants which have been denied a provisional license have 30 days after notification of the decision to file an appeal with the Cable Division.

DRAFTING THE PROVISIONAL LICENSE

The terms of the provisional license must be substantially the same as the terms of the final license. Therefore, the drafting of the provisional license takes care and attention. Some cable operators will prepare the draft of the provisional license for the community. Issuing Authorities may consult the Cable Division files, or our web page, which contain copies of current licenses granted in Massachusetts. In any case, the license is required by statute to contain a number of specific provisions, and the Issuing Authority should make certain that all of the required items are included. The list of required items is found in General Laws chapter 166A, sections 3(a)-(e) and 5(a)-(o). In addition to these required terms, many of the specifications requested in the Issuing Authority report and offered in the application should be included in the provisional license.

The provisional license must be executed within 3 months of the Issuing Authority's vote to award the license. The provisional license may be valid for a period of no longer than one year. The provisional license will expire upon the issuance of the final license, or one year from execution of the provisional license, whichever occurs first.

THE FINAL LICENSE

Upon grant of the provisional license, the provisional licensee has up to one year to:

- (1) complete and submit a license application form, the Form 100; and
- (2) demonstrate substantial compliance with the terms and conditions of General Laws chapter 166A, sections 3, 4 and 5.

If the Issuing Authority determines that the provisional licensee has failed to comply with the two requirements, the Issuing Authority must deny a final license to the provisional licensee. In such a case, the Issuing Authority must issue a written statement setting forth in detail the basis for such finding and denial. A copy of the statement must be sent to the provisional licensee and the Cable Division. The provisional licensee may appeal the decision to deny a final license to the Cable Division within 30 days.

If the cable operator has successfully met these two requirements, the Issuing Authority must then grant a final license to construct and operate a cable system. The final license must contain terms substantially identical with the terms contained in the provisional license. The Issuing Authority must issue a written statement detailing the reasons for granting the approval, including, where applicable, the reasons for accepting any alterations of the terms of the provisional license. A copy of the statement must be sent to the licensee. In addition, the Issuing Authority must file a copy of the statement, along with a copy of the Form 100 and final license, with the Cable Division.

REFERENCES

RELEVANT LAWS AND REGULATIONS

Massachusetts General Laws - Chapter 166A

Code of Massachusetts Regulations - 207 C.M.R. §§ 3.00 - 10.00

United States Code - Communications Act of 1934, as amended, Section 621 - 47 U.S.C. § 541

ADDITIONAL RESOURCES

Information regarding cable television licensing may be found at the Cable Division's website at www.state.ma.us/dpu/catv. The Cable Division's website also provides licenses in electronic format that are available for download.

A comprehensive glossary of cable-related terms is available at the Cable Division's website at www.state.ma.us/dpu/catv.